

FAIR MORTGAGE LENDING ACT



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**ARKANSAS SECURITIES DEPARTMENT
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SECTION 1. Arkansas Code Title 23, Subchapter 39, is amended to add a new subchapter as follows:

23-39-501. Title.

This subchapter may be referred to as the “Fair Mortgage Lending Act.”

23-39-502. Definitions.

For purposes of this subchapter:

- (1) “Branch manager” means the individual who is in charge of the business operations of one (1) or more branch offices of a mortgage broker, mortgage banker, or mortgage servicer;
- (2) “Branch office” means a location that is separate and distinct from the licensee's principal place of business:
 - (A) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this subchapter at the branch office;
 - (B) At which the licensee's name, advertising, promotional materials, or signage suggests that mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issues; or
 - (C) Which, due to the actions of any employee, associate ,or loan officer of the licensee, may be construed by the public as a branch office of the licensee where mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued;
- (3) “Commissioner” means the Arkansas Securities Commissioner and includes the commissioner's designees;
- (4) “Control” means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, limited partnership, association, or trust;
- (5) “Employee” means an individual who is employed by a mortgage broker, mortgage banker, or mortgage servicer, whether by employment contract, agency, or other arrangement, and regardless of whether the individual is

treated as an employee for purposes of compliance with the federal income tax laws;

- (6) (A) “Exempt person” means a person not required to be licensed as a mortgage broker, mortgage banker, mortgage servicer, or loan officer under this subchapter.
- (B) “Exempt person” includes any of the following:
 - (i) An employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
 - (ii) An agency or corporate instrumentality of the federal government or any state, county, or municipal government granting mortgage loans under specific authority of the laws of any state or of the United States;
 - (iii) A trust company or industrial loan company chartered under the laws of Arkansas;
 - (iv) An insurance company licensed or authorized to conduct business by the State Insurance Department;
 - (v) A small business investment corporation licensed under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq.;
 - (vi) A real estate investment trust as defined in 26 U.S.C. § 856;
 - (vii) A state or federally chartered bank, savings bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration or any of their operating subsidiaries;
 - (viii) An agricultural loan organization that is subject to licensing, supervision, or auditing by the United States Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, Farmers Home Administration, Farm Credit Administration, or the United States Department of Agriculture;
 - (ix) A nonprofit corporation that:

- (a) Qualifies as a nonprofit entity under section 501(c)(3) of the Internal Revenue Code;
 - (b) Is not primarily in the business of soliciting or brokering mortgage loans; and
 - (c) Makes or services mortgage loans to promote home ownership or home improvements for the disadvantaged;
- (x) (a) A licensed real estate agent or broker who is performing those activities subject to the regulation of the Arkansas Real Estate Commission.
- (b) Notwithstanding subdivision (6)(B)(x)(a) of this section, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan;
- (xi) A person who, as a seller of real property receives mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation, if:
- (a) The person does not receive from, or hold on behalf of the borrower any funds for the payment of insurance or taxes on the real property; and
 - (b) The maker of the liens or mortgages does not sell the liens or mortgages in the secondary market other than to affiliated or subsidiary persons;
- (xii) An individual, or husband and wife, who provides funds for investment in loans secured by a lien on real property, on his or her own account, who does not:
- (a) Charge a fee or cause a fee to be paid for any service other than the normal and scheduled rates for escrow, title insurance, and recording services; and
 - (b) Collect funds to be used for the payment of any taxes or insurance premiums on the property securing the loans;
- (xiii) An attorney at law rendering services in the performance of his or her duties as an attorney at law;

- (xiv) A person doing business under the laws of Arkansas or the United States relating to any broker-dealer, agent, investment adviser, or investment adviser representative registered with the State Securities Department;
 - (xv) A person performing any act under order of any court;
 - (xvi) A person acting as a mortgage broker, mortgage banker, or mortgage servicer for any person located in Arkansas, if the mortgage broker, mortgage banker, or mortgage servicer has no office or employee in Arkansas, and the real property that is the subject of the mortgage is located outside of Arkansas;
 - (xvii) A person who brokers, makes, or services mortgage loans if the only mortgage loans that the person brokers, makes, or services in Arkansas are nonresidential mortgage loans;
 - (xviii) An officer or employee of an exempt person described in subdivisions (6)(B)(ii) through (xvi) of this subsection if acting in the scope of employment for the exempt person; and
 - (xix) Other persons as the commissioner may by rule or order designate;
- (7) "Licensee" means a loan officer, mortgage broker, mortgage banker, or mortgage servicer who is licensed under this subchapter;
- (8) "Loan officer" means an individual other than an exempt person described in subdivision (6) of this section who, in exchange for compensation as an employee of a mortgage broker or a mortgage banker licensed under this subchapter:
- (A) Solicits or offers to solicit an application for a mortgage loan;
 - (B) Accepts or offers to accept an application for a mortgage loan;
 - (C) Negotiates or offers to negotiate the terms or conditions of a mortgage loan; or
 - (D) Issues or offers to issue a mortgage loan commitment or interest rate guarantee agreement;
- (9) "Make a mortgage loan" means to close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan;

- (10) "Managing principal" means a person who meets the requirements of § 23-39-505, and who agrees to be primarily responsible for the operations of a licensed mortgage broker, mortgage banker, or mortgage servicer;
- (11) "Mortgage banker" means a person who engages in the business of making mortgage loans for compensation or other gain;
- (12) "Mortgage broker" means a person who, for compensation or other gain, or in the expectation of compensation or other gain, and regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers:
 - (A) Accepts or offers to accept an application for a mortgage loan;
 - (B) Solicits or offers to solicit an application for a mortgage loan;
 - (C) Negotiates or offers to negotiate the terms or conditions of a mortgage loan; or
 - (D) Issues or offers to issue mortgage loan commitments or interest rate guarantee agreements to borrowers;
- (13) "Mortgage loan" means a loan primarily secured by either a mortgage or a deed of trust on real property;
- (14) "Mortgage servicer" means a person who receives from or on behalf of a borrower:
 - (A) Funds or credits in payment for a mortgage loan; or
 - (B) The taxes or insurance associated with a mortgage loan;
- (15) "Nonresidential mortgage loan" means a loan secured by an interest in real property used or to be used for other than one-to-four-family residential purposes;
- (16) "Operating subsidiary" means a separate corporation, limited liability company, or similar entity in which a national or state bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, maintains more than fifty percent (50%) of the voting rights or a controlling interest in the subsidiary;
- (17) "Person" means an individual, or a partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized; and

- (18) "Principal place of business" means a stationary construction consisting of at least one (1) enclosed room or building in which negotiations of mortgage loan transactions of others may be conducted in private, or in which the primary business functions of the licensee are conducted.

23-39-503. License required - Licensee records.

- (a) (1) It is unlawful for any person located in Arkansas, other than an exempt person, to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, or mortgage servicer, without first obtaining a license from the Arkansas Securities Commissioner under this subchapter.
- (2) Each mortgage banker and mortgage servicer that was exempt from the licensing requirements of §§ 23-39-101- 23-39-309 or held a valid license under §§ 23-39-101- 23-39-309 as of December 31, 2003 shall have one hundred and twenty (120) days from the end of its fiscal year to register under this section.
- (3) Each loan officer shall have until July 1, 2004, to register under this section.
- (b) It is unlawful for any person, other than an exempt person, to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, or mortgage servicer with any person located in Arkansas without first obtaining a license from the commissioner under this subchapter.
- (c) It is unlawful for any person, other than an exempt person, to employ, to compensate, or to appoint as its agent any person to act as a loan officer, unless the loan officer is licensed as a loan officer under this subchapter.
- (d) (1) The license of a loan officer shall terminate when his or her employment by or relationship with a mortgage broker or mortgage banker licensed under this subchapter terminates.
- (2) When a loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this subchapter, the mortgage broker or mortgage banker by whom that person was employed shall notify the commissioner in writing within thirty (30) days from the date on which the loan officer ceased to be employed.
- (3) (A) Any licensee that does not comply with this section shall pay a late fee equal to ten dollars (\$10.00) for each day that he or she fails to notify the commissioner as provided in

subdivision (d)(2) of this section, not to exceed six hundred dollars (\$600).

- (B) The late fee may be waived, in whole or in part, in the sole discretion of the commissioner and for good cause shown.
- (4) A loan officer shall not be employed simultaneously by more than one (1) mortgage broker or mortgage banker licensed under this subchapter.
- (e) Each mortgage broker and mortgage banker licensed under this subchapter shall maintain a list of all loan officers, employed by the mortgage broker or mortgage banker who engage or attempt to engage in business with any person in Arkansas.
- (f) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, mortgage broker, mortgage servicer, or loan officer unless the person is licensed in accordance with this subchapter.

23-39-504. Rulemaking authority.

The Securities Commissioner may adopt any rules that he or she deems necessary to:

- (1) Carry out the provisions of this subchapter;
- (2) Provide for the protection of the borrowing public; and
- (3) Instruct mortgage brokers, mortgage bankers, mortgage servicers, and loan officers in interpreting this subchapter.

23-39-505. Qualifications for licensure - Issuance.

- (a)
 - (1) Any person desiring to obtain a license as a loan officer, mortgage banker, mortgage broker, or mortgage servicer, shall make written application for licensure to the commissioner in the form prescribed by the Arkansas Securities Commissioner.
 - (2) The application may require that the information be submitted in electronic format.
 - (3) In addition to any other information required under this subchapter, or any rules adopted by the commissioner, the application shall contain any information the commissioner deems necessary, and shall include the following:
 - (A) The applicant's name, address, and social security number;

- (B) The applicant's form of business and place of organization, if applicable;
- (C) The applicant's proposed method of, and locations for, doing business, if applicable; and
- (D)
 - (i) The qualifications and business history of the applicant and any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant.
 - (ii) The qualifications and business history of persons under subdivision (a)(3)(D) of this section shall include:
 - (a) A description of any injunction or administrative order, including any denial to engage in a regulated activity, by any state or federal authority to which the person is, has been, or has sought to be, subject;
 - (b) Any conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the mortgage industry, the securities industry, the insurance industry, or any other activity pertaining to financial services; and
 - (c) Any felony convictions.

- (E)
 - (i) With respect to an application for licensing as a mortgage banker, mortgage broker, or mortgage servicer the applicant's financial condition and business history; and
 - (ii) With respect to the application for licensing as a loan officer, the applicant's business history.
- (b) In addition to meeting the requirements imposed by the commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:
 - (1) Be at least eighteen (18) years of age; and
 - (2) Have satisfactorily completed any educational and testing requirements as the commissioner may by rule or order impose.
- (c) In addition to the requirements under subsection (a) and (b) of this section, each applicant for licensure as a mortgage broker, mortgage banker, or mortgage servicer shall comply with the following requirements at the time of application and at all times thereafter:
 - (1) If the applicant is a sole proprietor, the applicant shall have at least three (3) years of experience in mortgage lending or other experience or competency requirements as the commissioner may adopt by rule or order;
 - (2) If the applicant is a general or limited partnership, at least one (1) of its general partners shall have the experience as described under subdivision (c)(1) of this subsection;
 - (3) If the applicant is a corporation, at least one (1) of its principal officers shall have the experience as described under subdivision (c)(1) of this subsection; and
 - (4) If the applicant is a limited liability company, at least one (1) of its managers shall have the experience as described under subdivision (c)(1) of this subsection.
- (d) Each applicant shall identify in its application one (1) person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.
- (e) Each applicant for initial licensure shall pay a filing fee of seven hundred fifty dollars (\$750) for licensure as a mortgage broker, mortgage banker, or mortgage servicer, or fifty dollars (\$50) for licensure as a loan officer.

- (f)
 - (1) Each mortgage banker and mortgage servicer shall post a surety bond in the amount of one hundred thousand dollars (\$100,000), and each mortgage broker shall post a surety bond in the amount of fifty thousand dollars (\$50,000).
 - (2) The surety bond shall be in the form prescribed by the commissioner and shall run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this subchapter.
 - (3) The aggregate liability of the surety shall not exceed the principal sum of the bond.
 - (4) A party having a claim against the licensee may bring suit directly on the surety bond, or the commissioner may bring suit on behalf of any claimants, either in one action or in successive actions.
 - (5) Consumer claims shall be given priority in recovering from the bond.
 - (6) Any appropriate deposit of cash or securities shall be accepted in lieu of any bond that is required.
- (g) Each applicant filing for licensure as a mortgage banker, mortgage broker, or mortgage servicer shall file with the commissioner as part of his or her application, audited financial statements that reflect that the applicant has a net worth of at least twenty-five thousand dollars (\$25,000) and are:
 - (1) Prepared by an independent certified public accountant;
 - (2) Prepared in accordance with generally accepted accounting principals as promulgated by the Financial Accounting Standards Board;
 - (3) Accompanied by an unqualified opinion acceptable to the commissioner; and
 - (4) Dated within twelve (12) months preceding the date on which the application is filed.
- (h) Any general partner, manager of a limited liability company, or officer of a corporation who individually meets the requirements under subsection (b) of this section shall be deemed to have met the qualifications for licensure as a loan officer upon filing a written application with the commissioner in the form prescribed by the commissioner and payment of the applicable fee.

- (i)
 - (1) Each principal office and each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall obtain a separate license.
 - (2) A licensed mortgage broker, mortgage banker, or mortgage servicer shall file with the commissioner an application in the form prescribed by the commissioner that identifies the address of the principal office, each branch office, and each branch manager.
 - (3) The commissioner shall assess a filing fee of one hundred dollars (\$100) for each branch office that is issued a license.
- (j) Except as set forth in § 23-39-506(d), each license issued by the commissioner under this subchapter shall expire at the close of business on the following dates unless previously surrendered by the licensee and the surrender is accepted by the commissioner, it is abandoned by the licensee as provided in § 23-39-506, or it is suspended or revoked by the commissioner:
 - (1) One hundred eighty (180) days after the end of the licensee's current fiscal year in the case of a mortgage broker, mortgage banker, or mortgage servicer; and
 - (2) One the last day of the twelfth month after the date of issuance in the case of a loan officer.
- (k) Licenses issued under this subchapter are not transferable.
- (l)
 - (1) Control of a licensee shall not be acquired through a stock or equity purchase, transfer of interest, or other device without the prior written consent of the commissioner.
 - (2) Any person seeking to acquire control of a licensee shall:
 - (A) Pay the commissioner a fee of one hundred dollars (\$100);
 - (B) Submit to the commissioner the information required under subdivision (a)(3)(D) of this section and any other information deemed relevant by the commissioner; and
 - (C) Certify that the licensee shall continue to meet the qualifications under this section.
 - (3) The commissioner may refuse to give written consent if he or she finds that any of the grounds for denial, revocation, or suspension

of a license under § 23-59-514 are applicable to the person seeking to acquire control of a license.

23-39-506. License renewal - Termination.

- (a) Each Licensed mortgage broker, mortgage banker, and mortgage servicer wishing to renew a license shall:
 - (1) File a renewal application with the Securities Commissioner in the form prescribed by the commissioner within one hundred twenty (120) days after the end of the licensee's fiscal year;
 - (2) (A) Submit with the renewal application audited financial statements through the end of the licensee's previous fiscal year that reflect that the applicant has a net worth of at least twenty-five thousand dollars (\$25,000).
 - (B) The audited financial statements shall be:
 - (i) Prepared by an independent certified public accountant;
 - (ii) Prepared in accordance with generally accepted accounting principles as promulgated by the Financial Accounting Standards Board; and
 - (iii) Accompanied by an unqualified opinion acceptable to the commissioner; and
 - (3) Pay the commissioner an annual renewal fee of three hundred fifty dollars (\$350) for the licensee's principal office and one hundred dollars (\$100) for each of the licensee's licensed branch offices.
- (b) The failure of a mortgage broker, mortgage banker, or mortgage servicer to timely file a renewal application shall subject the licensee to a late fee of twenty-five dollars (\$25.00) for each day, up to a maximum of sixty (60) days that the renewal application is late.
- (c) Each licensed loan officer wishing to renew a license shall:
 - (1) File an application with the commissioner in the form prescribed by the commissioner no later than sixty (60) days prior to the expiration date of the license; and
 - (2) Pay an annual renewal fee of fifty dollars (\$50.00).

- (d) The failure of a loan officer to timely file a renewal application shall subject the loan officer to a late fee of fifty dollars (\$50.00).
- (e)
 - (1) Any late fee assessed pursuant to subsection (b) or subsection (d) of this section shall be in addition to renewal application fee under subsection (a) or subsection (c) of this section, but may be waived, in whole or in part, at the sole discretion of the commissioner for good cause shown..
 - (2) If a mortgage broker, mortgage banker, mortgage servicer, or loan officer fails to file a renewal application within sixty (60) days after the date the renewal application is due, the commissioner may deem the license to be abandoned and surrendered and may require the licensee to comply with the requirements for initial issuance of a license under this subchapter in order to continue in business.
 - (3) The commissioner shall not reissue any license for which a late fee has accrued as a result of a person's failure to timely file a renewal application unless the late fee has been paid or waived by the commissioner for good cause shown.

23-39-507. Continuing education.

- (a) In addition to the other licensing requirements under this subchapter, the Arkansas Securities Commissioner may adopt rules to require continuing education of licensees under this subchapter for the purpose of enhancing the professional competence and professional responsibility of mortgage bankers, mortgage brokers, mortgage servicers, and loan officers and may condition the renewal of a license upon compliance with the commissioner's rules.
- (b) The rules under subsection (a) of this section may include criteria for:
 - (1) The content of continuing education courses;
 - (2) Accreditation of continuing education sponsors and programs;
 - (3) Accreditation of videotape or other audiovisual programs;
 - (4) Computation of credit;
 - (5) Special cases and exemptions;
 - (6) General compliance procedures; and

- (7) Sanctions for noncompliance with the continuing education requirements.
- (c) Annual continuing professional education requirements shall be determined by the commissioner, but shall not exceed eight (8) credit hours within a one-year period.

23-39-508. Managing principals and branch managers.

- (a) Each mortgage broker or mortgage banker licensed under this subchapter shall have a managing principal who operates the business under that person's full charge, control, and supervision.
- (b) Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this subchapter.
- (c) The managing principal for a licensee may also serve as the branch manager of one (1) or more of the licensee's branch offices.
- (d)
 - (1) Each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall have a designated branch manager who is in charge of and who is responsible for the business operations of a branch office.
 - (2) Each branch manager of a mortgage broker or mortgage banker must be licensed as a loan officer.
- (e) Each mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall file a form as prescribed by the Arkansas Securities Commissioner indicating the licensee's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility as managing principal or branch manager.
- (f) Each mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall notify the commissioner within thirty (30) days of any change in its managing principal or branch manager designated for each branch.
- (g)
 - (1) Any mortgage broker, mortgage banker, or mortgage servicer that does not comply with this section shall pay a late fee equal to ten dollars (\$10.00) for each day that he or she fails to notify the commissioner of the violation, not to exceed six hundred dollars (\$600).
 - (2) The late fee may be waived, in whole or in part, in the sole discretion of the commissioner and for good cause shown.

- (3) The commissioner may revoke or suspend any mortgage broker, mortgage banker, or mortgage servicer who fails to pay any late fee assessed under subdivision (g)(1) of this section.

23-39-509. Offices - Address changes - Location of records.

- (a) Each mortgage broker, mortgage banker, and mortgage servicer shall maintain a principal place of business.
- (b) In addition, each mortgage broker, mortgage banker, and mortgage servicer shall identify the location in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in Arkansas are maintained.
- (c) The Arkansas Securities Commissioner may, by rule, impose terms and conditions under which the records and files shall be maintained, including whether the records must be maintained in Arkansas.
- (d)
 - (1) Each mortgage banker, mortgage broker, or mortgage servicer shall report any change of address of the principal place of business, any branch office, or location in which the files pertaining to mortgage loan transactions relating to borrowers in Arkansas are maintained within thirty (30) days after the change.
 - (2)
 - (A) Any licensee that does not comply with subdivision (d)(1) of this section shall pay a late fee equal to ten dollars (\$10.00) for each day that he or she fails to notify the commissioner, up to a maximum of six hundred dollars (\$600).
 - (B) The late fee may be waived, in whole or in part, at the sole discretion of the commissioner for good cause shown
 - (3) The commissioner may revoke or suspend the license of any mortgage broker, or mortgage banker, or mortgage servicer who fails to pay any late fee assessed under subdivision (d)(2) of this section.

23-39-510. Licensee duties.

Each person required to be licensed under this subchapter, shall, in addition to duties imposed by other statutory or common law:

- (1) Safeguard and account for any money received for, from, or on behalf of the borrower;

- (2) Follow reasonable and lawful instructions from the borrower;
- (3) Act with reasonable skill, care, and diligence; and
- (4) Make reasonable efforts, with lenders with whom a broker regularly does business, to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan and the loan options for which the borrower qualifies with such lenders.

23-39-511. Records - Escrow funds or trust accounts.

- (a) The Arkansas Securities Commissioner shall keep a list of all applicants for licensure under this subchapter that includes:
 - (1) The applicant's name;
 - (2) The date of application;
 - (3) The applicant's place of residence; and
 - (4) Whether the license was granted or refused.
- (b)
 - (1) The commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers.
 - (2) The roster under subdivision (b)(1) of this section shall:
 - (A) Be kept on file in the office of the commissioner;
 - (B) Contain information regarding all orders or other action taken against the licensees, loan officers, and other persons; and
 - (C) Be open to public inspection.
- (c) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the commissioner.
- (d)
 - (1) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall file a correcting amendment to the information contained in the document within thirty (30) days from the date on which the change takes place.

- (2) (A) Any licensee that does not comply with subdivision (d)(1) of this section shall pay a late fee equal to ten dollars (\$10.00) for each day that he or she fails to file a correcting amendment, up to a maximum of six hundred dollars (\$600).
 - (B) The late fee may be waived, in whole or in part, at the sole discretion of the commissioner for good cause shown.
- (e) (1) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession, but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances.
- (2) The escrow fund or trust account under subdivision (e)(1) of this section shall be held on deposit in a federally insured financial institution.

23-39-512. Public inspection of records - Exceptions.

- (a) (1) Unless otherwise specified in this section, all information filed with the Arkansas Securities Commissioner shall be available for public inspection.
- (2) The information contained in or filed with any application, or report may be made available to the public under any rules that the commissioner prescribes that are consistent with state or federal law governing the disclosure of public information.
- (b) Except for reasonably segregable portions of information and records that by law would routinely be made available to a party other than an agency in litigation with the commissioner, the commissioner shall not publish or make available the following information:
 - (1) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation;
 - (2) Interagency or intra-agency memoranda or letters including generally records which reflect discussions between or consideration by the commissioner or members of his or her staff, or both, of any action taken or proposed to be taken by the commissioner or by any members of his or her staff, and specifically, reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's

staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the commissioner, or prepared otherwise in the course of an examination or investigation or related litigation conducted by or on behalf of the commissioner, except those which by law would routinely be made to a party other than an agency in litigation with the commissioner;

- (3) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including:
 - (A) Information concerning all employees of the State Securities Department and information concerning persons subject to regulation by the State Securities Department; and
 - (B) Personal information about employees of mortgage brokers, mortgage bankers, mortgage servicers, or loan officers reported to the commissioner under the department's rules concerning registration of those persons;
- (4) Investigatory records compiled for law enforcement purposes to the extent that production of the records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, or disclose the identity of a confidential source.
 - (A) The commissioner may also withhold investigatory records that would constitute an unwarranted invasion of personal privacy, disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel.
 - (B) Investigatory records under this section include:
 - (i) All documents, records, transcripts, correspondence, and related memoranda and work products concerning examinations and other investigations and related litigation as authorized by law that pertain to or may disclose the possible violations by any person of any provision of any of the statutes, rules, or regulations administered by the commissioner; and
 - (ii) All written communications from or to any person confidentially complaining or otherwise furnishing information respecting the possible violations, as well

as all correspondence and memoranda in connection with the confidential complaints or information;

- (5) Information contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions or mortgage lenders;
- (6)
 - (A) Financial records of mortgage bankers, mortgage brokers, mortgage servicers, or loan officers obtained during, or as a result of, an examination by the department.
 - (B) However, when any record under this subchapter is required to be filed with the commissioner as part of an application for license, annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, shall be public information unless sections of the information are bound separately and are marked "confidential" by the mortgage banker, mortgage broker, mortgage servicer, or loan officer upon its submission.
 - (C) Information under subdivision (6)(B) of this section that is bound separately and marked "confidential" shall be deemed nonpublic until ten (10) days after the commissioner has given the mortgage banker, mortgage broker, mortgage servicer, or loan officer notice that an order will be entered deeming the material public.
 - (D) If the mortgage banker, mortgage broker, mortgage servicer, or loan officer believes the commissioner's order is incorrect, the mortgage banker, mortgage broker, mortgage servicer, or loan officer may seek an injunction from the Circuit Court of Pulaski County ordering the department to hold the information as nonpublic pending a final order of a court of competent jurisdiction if the order of the commissioner is appealed under applicable law;
- (7) Trade secrets obtained from any person; or
- (8) Any other records that are required to be closed to the public and are not deemed open to the public inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq., or under other law.

23-39-513. Prohibited activities.

In addition to the other activities that are prohibited under this subchapter, it is unlawful for any person other than a person described in § 23-39-502 (6) (B) (vii) in the course of any mortgage loan transaction or activity:

- (1) To misrepresent or conceal any material fact or make any false promise likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise;
- (2) To improperly refuse to issue a satisfaction or release of a mortgage;
- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage banker, mortgage broker, mortgage servicer, or loan officer is not entitled to retain;
- (4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering a mortgage loan in violation of this subchapter, including a mortgage loan brokered or solicited by any unlicensed person other than an exempt person;
- (5) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, without disclosing the lengths of the loans, whether the interest rates are fixed or adjustable, and any other material limitations on the loans;
- (6) To fail to disburse funds in accordance with a written commitment or agreement to make or service a mortgage loan;
- (7) In connection with the advertisement, solicitation, brokering, making, servicing, purchase, or sale of any mortgage loan, to engage in any transaction, practice, or course of business that is not in good faith or fair dealing, that is misleading or deceptive, or that constitutes a fraud upon any person; or
- (8) (A) To broker or make a residential mortgage loan that contains a penalty for prepayment if the prepayment is made after the expiration of the thirty-six (36) month period immediately following the date on which the loan was made.

[Amended December 31, 2003, by Act 26 of the 2nd Extraordinary Session.]

(B) Any penalty for prepayment under subdivision (8)(A) made within the thirty-six (36) month period shall not exceed the greater of:

- (i) (a) Three percent (3%) of the principal loan amount remaining on the date of prepayment, if the prepayment is made within the first twelve (12) month period immediately following the date the loan was made;
- (b) Two percent (2%) of the principal loan amount remaining on the date of prepayment, if the prepayment is made within the second twelve (12) month period immediately following the date the loan was made;
- (c) One percent (1%) of the principal loan amount remaining on the date of prepayment, if the prepayment is made within the third twelve (12) month period immediately following the date the loan was made; or
- (ii) An amount equal to interest for six (6) months calculated on eighty percent (80%) of the remaining principal balance due on the residential mortgage loan as of the date the prepayment is made;

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(9) (A) To influence or attempt to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.

(B) This subdivision does not prohibit a mortgage broker or mortgage banker from asking the appraiser to do one or more of the following:

- (i) Consider additional appropriate property information;
- (ii) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or
- (iii) Correct errors in the appraisal report;

- (10) To broker or make a refinancing of a residential mortgage loan where the refinancing charges additional points and fees, within a twelve (12) month period after the original loan agreement was signed, unless the refinancing results in a reasonable, tangible net benefit to the borrower considering all of the circumstances surrounding the refinancing;

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- (11) To broker or make a mortgage loan in violation of any federal law or any law of Arkansas; and
- (12) To engage in practices that are dishonest or unethical in the mortgage industry.

23-39-514. Disciplinary authority.

- (a) The Arkansas Securities Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this subchapter or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the commissioner finds that:
 - (1) The order is in the public interest; and
 - (2) Any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing principal, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee. The person:
 - (A) Has filed an application for license that, as of its effective date or as of any date after filing, contained any omission or statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact;
 - (B) Has violated or failed to comply with any provision of this subchapter, rule adopted by the commissioner, or order of the commissioner issued under this subchapter or under Acts 1977, No. 806, as amended;.

- (C) Has pleaded guilty or nolo contendere to or been found guilty of:
 - (i) Any felony;
 - (ii) Any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing within the past ten (10) years; or
 - (iii) Any offense involving mortgage lending, any aspect of the mortgage industry, or any aspect of the securities industry, the insurance industry, or any other activity pertaining to financial services;
- (D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage industry, the securities business, the insurance business, or any other activity pertaining to financial services;
- (E) Is the subject of an order of the commissioner:
 - (i) Denying, suspending, or revoking that person's license as a mortgage broker, mortgage banker, mortgage servicer, loan officer, securities broker-dealer, securities agent, investment adviser, or investment adviser representative; or
 - (ii) Directing that person to cease and desist from any activity regulated by the commissioner, including any order entered pursuant to Acts 1977, No. 806, as amended;
- (F) Is the subject of an order, including any denial, suspension, or revocation of authority to engage in a regulated activity, by any other state or federal authority to which the person is, has been, or has sought to be subject, entered within the past five (5) years, including but not limited to, the mortgage industry;
- (G) Has been found by a court of competent jurisdiction to have charged or collected any fee or rate of interest, or made or brokered any mortgage loan with terms or conditions or in a manner contrary to the Arkansas Constitution, Article 19, § 13, as amended by Amendment 60.

- (H) Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under § 23-39-505 or any bond or net worth requirements under this subchapter;
 - (I) Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker, mortgage banker, or mortgage servicer who has been subject to an order or injunction described in subdivisions (D) through (G) of this subsection; or
 - (J)
 - (i) Has failed to pay the proper filing fee, renewal fee, or any late fees under this subchapter.
 - (ii) The commissioner may enter a denial order against a person under this subsection (a) when the person has failed to pay the proper filing fee, renewal fee, or any late fees under this subchapter, but the commissioner shall vacate the order when all fees have been paid.
- (b)
- (1) The commissioner may, by order, impose a civil penalty upon a licensee or any partner, officer, director, member, manager, or other person occupying a similar status or performing a similar function on behalf of a licensee for any violation of this subchapter, a rule under this subchapter, or an order of the commissioner.
 - (2) The civil penalty shall not exceed ten thousand dollars (\$10,000) for each violation under subdivision (b)(1) of this section by a mortgage broker, mortgage banker, mortgage servicer, or loan officer.
- (c)
- (1) The commissioner may, by order, summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section.
 - (2) Upon entering the order, the commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for issuing the order.
 - (3) The applicant or licensee may contest the order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the address of the licensee on file with the commissioner by first class mail, postage prepaid.
 - (4) The commissioner shall schedule a hearing to be held within thirty (30) days after the commissioner receives a timely written request for a hearing.

- (5) If a licensee does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.
 - (6) If a hearing is requested or ordered by the commissioner, after notice of, and opportunity for hearing, the commissioner may modify or vacate the order or extend it until final determination.
- (d) (1) In addition to other powers under this subchapter, upon finding that any action of a person is in violation of this subchapter, the commissioner may summarily order the person to cease and desist from the prohibited action.
- (2) (A) Upon entering the order under subdivision (d)(1) of this section, the commissioner shall promptly notify the person that the order has been entered, and the reasons for the order.
 - (B) The person may contest the cease and desist order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the last known address of the licensee by first class mail, postage prepaid.
 - (C) The commissioner shall schedule a hearing to be held within thirty (30) days after the commissioner receives a timely written request for a hearing.
 - (D) If the person does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.
 - (E) If a hearing is requested or ordered, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or make it permanent.
- (3) (A) A person shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the commissioner's cease and desist order committed after entry of the order, if:
- (i) The person subject to the cease and desist order fails to appeal the order in accordance with § 23-39-515 of this subchapter, or if the person appeals and the appeal is denied or dismissed; and

- (ii) The person continues to engage in the prohibited action in violation of the commissioner's order.
 - (B) The commissioner may file an action requesting the civil penalty under subdivision (d)(3)(A) of this section with the Circuit Court of Pulaski County or any other court of competent jurisdiction;
 - (C) The penalties of this section apply in addition to, and not in lieu of, any other provision of law applicable to a person for the person's failure to comply with an order of the commissioner.
- (e) Unless otherwise provided, any action, hearing, or other proceeding under this subchapter shall be governed by the Arkansas Administrative Procedures Act, § 25-15-201, et seq.
- (f) If the commissioner has grounds to believe that any person has violated the provisions of this subchapter, or that facts exist that would be the basis for an order against a licensee or other person, the commissioner or the commissioner's designee may at any time, investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation.
- (g) (1) The commissioner or the commissioner's designee may:
- (A) Administer oaths and affirmations;
 - (B) Issue subpoenas to require the attendance of, and to examine under oath, all persons whose testimony the commissioner deems relevant to the person's business; and
 - (C) Require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
- (2) (A) In case of contumacy by or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court upon application by the commissioner may issue an order requiring the person to appear before the commissioner or the office designated by the commissioner, to produce documentary evidence if so ordered, or to give evidence touching the matter under investigation or in question.

- (B) Failure to obey the order of the court may be punished by the court as a contempt of court.
- (3)
 - (A) The assertion that the testimony or evidence before the commissioner may tend to incriminate or subject a person to a penalty or forfeiture shall not excuse the person from:
 - (i) Attending and testifying;
 - (ii) Producing any document or record;
 - (iii) Obeying the subpoena of the commissioner or any officer designated by the commissioner;
 - (B) However, no person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming a privilege against self-incrimination, to testify or produce evidence, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed while testifying.
- (h)
 - (1) The commissioner may from time to time conduct examinations, with or without cause, of the books and records of any applicant or licensee in order to determine the compliance with this subchapter and any rules adopted under this subchapter.
 - (2) The applicant or licensee shall pay a fee for each examination under subdivision (h)(1) of this section, not to exceed one hundred fifty dollars (\$150) per examiner for each day, or for part of a day, during which any examiners are absent from the office of the commissioner for the purpose of conducting the examination.
 - (3) In addition, the applicant or licensee shall pay the actual hotel and traveling expenses of the examiner traveling to and from the office of the commissioner while the examiner is conducting an examination under subdivision (h)(1).
- (i) If the commissioner finds that the managing principal, branch manager, or loan officer of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in, any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the commissioner may prohibit the managing principal, branch manager, or loan officer from serving as a managing principal, branch manager, or loan officer for any period of time the commissioner deems appropriate.

- (j) All orders shall contain written findings of fact and conclusions of law. Except for orders entered under subdivisions (c)(1) and (d)(1) of this section, before entering an order under this section, the commissioner shall provide:
 - (1) Prior notice to the licensee or person who is the subject of the order; and
 - (2) An opportunity for hearing;
- (k) This section does not prohibit or restrict the informal disposition of a proceeding, or allegations that might give rise to a proceeding by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.
- (l) (1) If it appears, upon sufficient grounds or evidence satisfactory to the commissioner, that any person or licensee has engaged in, or is about to engage in any act or practice that violates this subchapter, or any rule or regulation adopted, or order issued under this subchapter, that the assets or capital of any licensee are impaired, or the licensee's affairs are in an unsafe condition, the commissioner may:
 - (A) Refer the evidence which is available concerning violations of this subchapter or any rule, regulation, or order issued under this subchapter, to the appropriate prosecuting attorney or regulatory agency, who may with or without the reference, institute the appropriate criminal or regulatory proceedings under this subchapter; and
 - (B)
 - (i) Summarily order the licensee or person to cease and desist from the act or practice under subdivisions (c)(1) and (d)(1) of this section, apply to the Circuit Court of Pulaski County to enjoin the act or practice, and to enforce compliance with this subchapter or any rule, regulation, or order issued under this subchapter, or both.
 - (ii) However, the commissioner may, without issuing a cease and desist order, apply directly to the Circuit Court of Pulaski County for an injunctive or other relief.
- (2) Upon proper showing, the court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

- (3) The commissioner may also seek, and the appropriate court shall, upon proper showing, grant any other ancillary relief that may be in the public interest, including:
 - (A) The appointment of a receiver, temporary receiver, or conservator;
 - (B) A declaratory judgment;
 - (C) An accounting;
 - (D) Disgorgement;
 - (E) Assessment of a fine in an amount of not more than ten thousand dollars (\$10,000) for each violation; and
 - (F) Any other relief as may be appropriate in the public interest.
- (4) The court may not require the commissioner to post a bond.

23-39-515. Review of order of the commissioner.

- (a) (1) Any person aggrieved by a final order of the Arkansas Securities Commissioner may obtain a review of the order by filing in the Circuit Court of Pulaski County, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part.

- (2) (A) A copy of the petition shall be served upon the commissioner, after which, the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered.
 - (B) When a petition under subdivision (a)(1) of this section has been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside any order of the commissioner, in whole or in part, except that a court may not set aside a summary order entered by the 3 commissioner when the subject of the order has not requested a hearing before the commissioner as provided in § 23-39-514(c)(1) or (d)(1).
- (b) (1) The findings of the commissioner as to the facts, are conclusive if supported by competent, material, and substantial evidence.
- (2) If either party applies to the court for leave to submit additional material evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to submit the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be submitted upon the hearing before the commissioner in any manner and upon any condition as the court considers to be proper.
- (3) After consideration of the additional evidence, the commissioner may modify his or her findings and order, and shall file in the court the additional evidence together with any modified or new findings or order.
- (c) Unless specifically ordered by the court, the commencement of proceedings under subsection (a) of this section does not operate as a stay of the commissioner's order.

23-39-516. Criminal penalty.

- (a) It is unlawful for any person to make or cause to be made, in any document filed with the Arkansas Securities Commissioner or in any proceeding under this subchapter, any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.
- (b) (1) A person is guilty of a Class B felony if he or she:
 - (A) Willfully violates any provision of this subchapter, except subsection (a) of this section,

- (B) Willfully violates subsection (a) of this section knowing the statement to be false or misleading in any material respect, or
 - (C) Willfully violates any rule under this subchapter, or any order of the commissioner.
- (2) Each transaction involving the unlawful making or brokering of a mortgage loan is a separate offense.
- (c) No person may be imprisoned for violation of any order of the commissioner unless the person had actual knowledge of the order.
- (d) The commissioner may refer any available evidence concerning violations of this subchapter or any rule or order issued under this subchapter to the appropriate prosecuting authority, who may, with or without the reference, institute the appropriate criminal proceedings under this subchapter.
- (e) This subchapter does not limit the power of the state to punish any person for any conduct that constitutes a crime under any statute or common law.